

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

Civ. No. 2:17-cv-00138

PURPLE INNOVATION, LLC, a Delaware
limited liability company,

Plaintiff,

v.

HONEST REVIEWS, LLC, a Florida
corporation, RYAN MONAHAN, an individual,
and GHOSTBED, INC., a Delaware corporation,

Defendants.

NOTICE OF APPEAL

Pursuant to Federal Rule of Appellate Procedure 3 and 28 U.S.C. § 1292(a)(1), notice is given that Defendant, Ghostbed, Inc., appeals to the United States Court of Appeals for the Tenth Circuit from the preliminary injunction entered here on September 22, 2017, [D.E. 191]. Ghostbed also appeals the order denying its motion to dismiss for lack of personal jurisdiction, improper venue, and failure to state a claim [D.E. 151], because those issues are necessarily intertwined with the preliminary injunction. *See, e.g., Maybelline Co. v. Noxell Corp.*, 813 F.2d 901, 903 n.1 (8th Cir. 1987) (denial of motion to dismiss for improper venue is reviewable on appeal from preliminary injunction); *Kroger Co. v. Malease Foods Corp.*, 437 F.3d 506, 510 & n.2 (6th Cir. 2006) (same as to personal jurisdiction) (citing 16 Wright & Miller, FED. PRAC. & PROC. JURIS., § 3921.1 Interlocutory Injunction Appeals—Scope of Appeal (3d ed.)); *Munaf v. Geren*, 553 U.S. 674, 691 (2008) (“[W]hether an action should be dismissed for failure to state a

claim is one of the most common issues that may be reviewed on appeal from an interlocutory injunction order.”) (quoting Wright & Miller, *supra*).

Respectfully submitted,

/s/ Kathryn T. Smith

Kathryn T. Smith
Karmen Schmid
STRONG & HANNI
102 South 200 East, Suite 800
Salt Lake City, UT 84111
Telephone: (801) 532-7080
Facsimile: (801) 596-1508
ksmith@strongandhanni.com
kschmid@strongandhanni.com

/s/ Eleanor M. Yost

Ethan Horwitz (*pro hac vice*)
Eleanor M. Yost (*pro hac vice*)
CARLTON FIELDS JORDEN BURT, P.A.
Chrysler Building
405 Lexington Avenue, 36th Floor
New York, New York 10174-3699
Telephone: (212) 785-2577
Facsimile: (212) 785-5203
ehorwitz@carltonfields.com
eyost@carltonfields.com

Counsel for Defendant GhostBed, Inc.

CERTIFICATE OF SERVICE

I CERTIFY that on October 16, 2017, this notice of appeal was e-filed via the Court's ECF system and served on the following counsel of record:

James E. Magleby
Christine T. Greenwood
Adam Alba
MAGLEBY CATAXINOS & GREENWOOD
170 South Main Street, Suite 1100
Salt Lake City, UT 4101-3605
magleby@mcgiplaw.com
greenwood@mcgiplaw.com
alba@mcgiplaw.com

Marc J. Randazza
Ronald D. Green
RANDAZZA GROUP, LLM
4035 South El Capitan Way
Las Vegas, NV 89147
mjr@randazza.com
ecf@randazza.com
rdg@randazza.com

W. Andrew McCullough
W. ANDREW McCULLOUGH, LLC
6885 South State Street, Suite 200
Midvale, UT 84047
wandrew48@ymail.com

D. Gill Sperlein
RANDAZZA GROUP, LLM
345 Grove Street
San Francisco, CA 94102
dgs@randazza.com

/s/ Eleanor M. Yost

Eleanor M. Yost (*pro hac vice*)